

STATE OF NEW-YORK.

No. 346.

IN ASSEMBLY,

May 9, 1840.

REPORT

Of the standing committee on medical societies and colleges, relative to the restrictions on unlicensed practitioners. A

Mr. Marvin, from the committee on medical societies and colleges, to whom was referred the petition of sundry inhabitants of this State who, believing that a well regulated system of the practice of medicine is essential to the welfare of community, pray the Legislature not to repeal the present restrictions, but to pass a law more effectually restraining unlicensed practitioners; and also to require from the medical student a still more extended and thorough course of study,

REPORTS :

That the committee have had the subject of the above petition under consideration, and although it is thus brief, they are aware that it embraces objects and interests in which community feel too deeply concerned, not to require at their hands a thorough and careful examination.

Your committee, regarding the subject as one of great moment, and being convinced that the guardianship of the public health is a measure of sound policy with which it would be hazardous to the public welfare unnecessarily to meddle, would avail themselves of the opportunity to express their views somewhat at length, with the hope that this House as well as the community at large, may be led to wise and judicious conclusions on a subject, upon which each and every individual have so much at stake.

And first, your committee would premise, that the question or subject submitted for the consideration of your committee, is not whether this or that theory, system or mode of practice in medicine, may or may not be adopted by any and every citizen of this state without imposing any obstacle or restriction whatever. If this were the true issue upon this subject, our duty would be plain; for in medicine as in religion universal toleration is secured to every citizen by constitutional provisions; nor has any sect or party of physicians under existing laws any exclusive rights or privileges; but all are left free to entertain and promulgate their own opinions, whether true or false without being subjected to any disabilities, or incurring any penalties.

But the question at issue is not between this or that sect of physicians, but between the educated and uneducated practitioner in the healing art. Whether the learned and scientific physician, the ignorant and conceited pretender shall be alike authorized and recognized by law, to assume the difficult and responsible office of physician and surgeon without discrimination.

And the decision of this question, thus divested of all obscurity and made to appear in its true and proper light, might be safely left to the bold and daring empiric himself, could his calm and impartial consideration be directed to the subject but for a single moment.

All men will admit that ignorance is a disqualification for the proper discharge of the duties of any trade or profession.

None will deny that ignorance of the structure of the human body, ignorance of the functions of that body in health, and ignorance of the nature and effects of remedies on diseased organs of that body, or indeed ignorance on either of these subjects, wholly unfit any man to be entrusted with the health and lives of his fellow citizens; and yet strange to say, many who fully accord in these sentiments are petitioning for laws for the protection of quackery, or to repeal those acts which have been passed for no other purpose, than to protect the health and lives of community from the hazardous experiments of ignorant or unprincipled men.

And to illustrate this point still further, for a moment let the inquiry be made, who would entrust his valuable watch for repair, to the blacksmith who shoes his horse? What mariner would go to sea in the ship built by his tailor? or what lady would commit her piano or music

box, the inestimable gift of love or friendship, when either were out of tune, to the repairing hand of her shoemaker? To propose these questions, is to answer them. And yet, is it not strange, an anomalous paradox, even in this age of wonders, that ladies and gentlemen of refinement, education, accomplishments and fortune, and of high intelligence too, exhibited on all other subjects, do, nevertheless, commit their livers, lungs and brains, to the hazardous experiments of men whose ignorance would forbid their employment in the most menial offices? And whence have we this strange anomaly? Is it because of a wide spread misanthropy which leads to an indifference to the value of health and life? Assuredly not. These very persons are those most anxious about their health, most sensitive of its loss; many of them would be ready to give quackery itself a world of wealth for an inch of time. But the mystery is nevertheless, easily solved. The public, generally, are well informed touching the intricacy of a watch, a ship, a piano and a music box, and the mass of the people are sufficiently enlightened to know that none but the skilful hand and practised eye can safely meddle with such complicated machines. But is the human body less intricate? Is the structure of man less delicate and complicated? Are blood-vessels, nerves, and vital tissues in the living body, more safely handled by rude hands, and subjected to medicinal or poisonous agents, than are the wheels of a watch, the ropes of a ship, or the keys of a musical instrument? Certainly not; but then the latter are subjects open to the senses, appreciable to every capacity and popular curiosity in relation to these forms of mechanism, has never been repressed. Every one knows that any one may be a watch-maker, a ship-builder, or a musical instrument-maker, who will give time and patience to the work; and all know, equally well, that none can safely undertake such employments, without having previously and regularly learned them. And this is the source of correct notions on such subjects, which every where prevails.

But such is lamentably not the fact in regard to the noble science of medicine. The popular mind is radically wrong in all that relates to the healing art. An impostor has only to proclaim that *hemlock* is a *mineral*, and that castor oil is made of *dead men's bones*, and other than confessedly children and fools are shocked with the intelligence.

Again it is gravely urged by some that the practice of medicine is so simplified by modern discoverers, that the great and fundamental prin-

ciples of medical science as taught in our schools, which have borne the scrutiny and received the approbation of the wise and learned in all ages ; the production of whole lives devoted to the unwearied and patient accumulation of facts and principles, and which are recognized and established on the broad basis of truth as firm as the laws of attraction and gravitation, wherever science and civilized man exists, is no longer even entitled to credit or worthy of consideration ; and that however ignorant and untaught a man may be on all other subjects, he may, in the space of a few days, as if by modern steam power, be suddenly forced through the preliminaries and rudiments of a medical education to maturity, and come forth to the public as a thorough bred physician and boldly demand their confidence and protection. An ignorant clown has only to lay aside his awl and his waxen thread, for roots and yarbs, and thousands are to become the lapstones on which he may hammer out his fame and fortune ; if he only take the title of botanical or Indian doctor, and boast of vegetable remedies for all incurable diseases. The more ignorant he is of the learned lumber of the schools or even of his own mother tongue, the more confidence is reposed in his skill, especially if he be a seventh son of the seventh daughter, or profess to have obtained his *larnin* by inspiration or immediate revelation, whether from celestial or infernal agency. Superstition and even religious fanaticism are thus made tributary to the popular delusion, and multitudes become the victims of the stupid experimentalist upon popular gullibility. And it is alleged as a grievance that such should not be recognized by law on an equality of the rights and immunities of the profession, with the one who has foregone the pleasures of early life, and devoted his fortune, his talents and all his energies for years, in the accumulation of knowledge in his profession before he could justly be entitled to the confidence and protection of community. It has also been urged that a monopoly is granted to the latter, to the exclusion of the former, which is anti-democratic and contrary to the spirit of our institutions. All this, however specious, is utterly without foundation as will appear at a glance. Certain conditions are imposed by law in every civilized country upon a great variety of trades and occupations, and any man who can comply with those conditions can obtain a license for such trade or occupation. Is there any monopoly in this ? Is it anti-republican ? It is precisely so in regard to the practice of physic and surgery in this State under existing laws, which defines the conditions upon which a license may be obtained by all who choose to conform to those conditions.

If, therefore, after men are qualified by education and license, they choose to turn Homœopathists or animal magnetizers, steam doctors or Grahamites, or to adopt any other of the passing humbugs of the days ; —the law interposes no obstacle, but insists that none but the educated shall be recognized by the authority of the State, and hence defines the legal evidence of such education, provides means for its attainment, and directs the manner in which the proofs shall be exhibited, of the necessary kind and degree of education, before a license shall be granted. The question of the theory or system of practice to be employed, is then left by the law wholly at the discretion of such licensed physician upon his own responsibility, and at the option of his employers.

And is it not indeed strange that in the 19th century, in the year 1840, a virtual *plea for ignorance* should be urged upon a legislative body, and ignorance too, in relation to a subject, in which every individual in community has so deep and abiding an interest, as the preservation of health and life. Ignorant physicians have been justly denominated the most deadly enemies of community ; the plague itself is not more destructive ; and it is when they are looked up to as Saviours, with the confidence of hope, that they give speed to the progress of disease, and certainty to the stroke of death.

The prevalent system or theory of medicine in any country is believed to have a greater influence over the lives of its inhabitants, than the epidemic diseases produced by its climate, or the decisions of its government concerning peace and war. The devastations of the yellow fever or cholera, bears no comparison with the ravages committed by certain ignorant and erroneous notions in medicines, which frequently become wide spread and influential upon the public mind—and the slaughter of the field of Waterloo counts not of victims a tithe of the number which certain dogmas in physic can boast. There is not a medical prejudice introduced by ignorance which has not slain its thousands, nor a false theory received into ignorant minds which has not immolated its tens of thousands. It is because of just apprehension of such conditions as these, that the authorities of this State have felt it an imperious duty to encourage learning in this department so essential to the public welfare.

Still however, the law as at present constituted, imposes no restraint on any citizen of the State in the choice of his physician, nor in

renumerating him for his services. If he choose, in the exercise of his own sovereign will and pleasure to prefer ignorance to knowledge, and to entrust the health and lives of himself and family to any mountebank or quack he thereby incurs no penalty by our laws.

True the law does not recognize the unlicensed practitioner, and he cannot therefore recover payment for his services by legal process; and for the obvious reason, that to practise without license is an unlawful act, and the public safety demands that it should be so, nor has the individual practitioner any right to complain, for in almost every county in the State resides a licensing power, and by a compliance with the salutary requisitions of the law, and giving proof of qualifications for the business he pursues, such license is attainable by him on the same terms as by his neighbor, who is already licensed.

Ignorance is the only disqualification, and it is such, or ought to be by law in every other calling.

Your committee would further say, that so important is this subject regarded, and has been by the intelligent in all ages, that the authority and resources of the State have been freely extended to medical colleges, which, under the wise and judicious supervision of the Regents of the University, are yearly training up a succession of thoroughly educated young men, who devote themselves to the study and practice of medicine, and in due time become the legally constituted guardians of the public health.

Before they are permitted to assume this responsible office, they are required to furnish proof of their qualification, by age, moral character, term of study, attendance upon regular lectures in incorporated schools, and by examination on all the departments of the science, give evidence of a full preparation for the office upon which they enter.

Thus far the State has been led by policy and duty to provide, as far as legislation can do, against ignorant practitioners in medicine, and that the public may not be imposed upon, such, and such only, are licensed as physicians and surgeons.

Your committee believe that it is only among savage, and in rude and uncivilized societies, that such regulations do not exist; and the adoption of them may always be looked upon as one of the surest indications of progressive improvements in any community. It shows

the birth of liberal sentiments, and a juster appreciation of the value of professional knowledge. Without the existence of such regulations, it is impossible for a profession to become truly respectable. Knowledge not being an essential requisite, other passports to public favor are resorted to. Assurance then usurps the place of talent, gravity of wisdom, boasting of knowledge, cunning of skill, and the whole practice becomes a mere play of knavery upon the weakness and credulity of mankind. This is strikingly illustrated in every community where laws do not exist to regulate the practice of medicine.

Before the American Revolution, when no restraints existed, your committee would direct the attention of the House to a picture as given of the profession by competent judges. Douglass, who was himself a physician, and wrote an account of the North American Colonies, which was published about 1753, gives the following description in his work, of the practice in this country: "In general," he says, "the physical practice in our colonies is so perniciously bad, that, excepting in surgery, and some very acute cases, it is better to let nature, under a proper regimen, take her course, than to trust to the honesty or sagacity of our practitioners. Our American practitioners are so rash and officious, that the saying in the Apocrypha (38—15) may with propriety be applied to them. He that sinneth before his Maker, let him fall into the hands of the physician. In the most trifling cases, they use a routine practice. When I first arrived in New-England, I asked a noted facetious practitioner, what was their general method of practice; he told me their practice was very uniform; bleeding, vomiting, blistering, purging, anodyne, &c. If the illness continued, there was *repetendi*, and finally *murandi*." Smith, in his history of this State before the Revolution, gives a picture not more flattering of the profession, and boldly assigns the cause.

"Few physicians amongst us are eminent for their skill. Quacks abound like locusts in Egypt, and too many have recommended themselves to a full practice and profitable subsistence. This is the less to be wondered at, as the profession is under no kind of regulation; any man at his pleasure sets up for physician, apothecary and surgeon. No candidates are either examined or licensed, or even sworn to fair practice." It was impossible that a state of things so disreputable to the profession, and injurious to the public, could long continue. The evil was too great, and came too closely home to the person of every individual, to be long continued. Measures were accordingly adopted

to wipe off so foul a stain from our honor. These consisted of laws regulating the qualifications required of those who entered the profession, and the establishment of medical societies in every county in the State, specially charged with the enforcement of those laws. An organized system, embracing, within the sphere of its operation, every portion of the State, was thus founded by law, which has been most salutary in its influence, and which is destined in future, under wise and judicious regulations, to confer still greater blessings, both upon the profession and the public.

And your committee are deeply impressed with the belief that, to break down and remove all distinctions by law between educated and ignorant physicians, would be to encourage and perpetuate among our fellow-citizens the vast tribe of mountebanks and empirics who now infest our country, and prey on its health, its cupidity and its *substance*, and thus be offering, in effect, a bounty to quackery, and a price for its victims, and that such a state of things would tend hopelessly to degrade the profession and to prevent the cultivation of the science of medicine.

Who would long be the teachers of medical science, when their well trained pupils were to be placed, by law, on no higher ground than the mere pretender? What young man of character, of talent and education would be induced to devote himself, in the morning of life, to years of diligent study and laborious toil; trimming the midnight lamp for months, while he inhales the sepulchral vapors of the dissecting room, in the thankless prosecution of the science of medicine, the investigation of the diseases of the human frame, their seat and remedy, which has for its ultimate objects the alleviation of human woes, when, by the laws of the State, he is to be virtually levelled with the vilest impostor in the healing art.

Your committee are not surprised that on this, as well as on all other subjects in which community are generally interested, there should be a great diversity of opinion. Many individuals, witnessing from time to time the destructive ravages committed by unlicensed practitioners, feel a strong interest in checking their acts. And it can not be concealed but that great misery, and even loss of life itself, is frequently caused by the incautious and improper use of various medicinal articles, recommended and administered by ignorant and conceited persons. And again, our public prints are filled with testimonials from many distin-

guished individuals, lawyers, clergymen, merchants, &c. whose opinions are entitled to great consideration, on all subjects which pertain to their own professions, of substances curing almost every human disease. In these different ways the hopes and fears of a great portion of society are operated upon, to their manifest injury.

But while all intelligent men will readily concede that the evils in question are great, and should be remedied if possible, it is, in the opinion of your committee, at least doubtful, whether they can be removed by further legislative enactments. Experience has shown that any law of this description would induce the cry of persecution to be raised against the unlicensed practitioner; and that at no subsequent period in our State, has quackery been patronised with so liberal a hand as during the existence of the only law ever enacted for that purpose in this State. It is a well known fact, that men when incited by this idea, will adhere pertinaciously to their opinions, however monstrous or absurd. No matter how flagrant may be the case of permanent injury, or should it be even manslaughter itself, by an unlicensed practitioner, the public sympathy will be aroused among at least a portion of our citizens, especially if any medical man should attempt to do his duty in censuring the crime. Such is lamentably the condition of the public mind on this question. Probably on no other subject is the popular mind less informed, and in no other department is there so fruitful a field for imposture and fraud. All laws for the suppression of quackery would only multiply its agents and victims, while the remonstrances of medical men are regarded merely as the idle and interested declamation of mercenary mystics; for in the language of Lord Bacon, "in the opinion of the multitude, witches, fortune-tellers and conjurers have always held competition with physicians."

In the opinion of your committee, the only mode in which the evils complained of can be gradually removed, is by enlightening the public mind on the nature and condition of the human body, on the causes of health and disease, and above all, by proving to them in every practicable way, that the enormous consumption of these powerful substances by them, must in the end exhaust and destroy their constitutions, for which they are taken to strengthen and invigorate. If to these we add additional requisitions for the purpose of increasing the knowledge of the medical profession, as asked for by your petitioners, thereby, instead of lowering, to elevate it still higher in the scale of usefulness,

it might reasonably be hoped that ere long the race of empirics and pretenders will diminish or even become extinct; and that quackery in all its forms would be thus shamed out of countenance, and banished from the abodes of civilized men.

There can be no just reason assigned, why the student of medicine should not devote as long a time in preparing for the important duties of his occupation, as the student in law or theology. The rule applies in every description of business, that the larger the capital, if it be managed with prudence and skill, the larger will be the annual income. And the physician, if he be thoroughly grounded in the elements of his profession, and possessed of a common knowledge of men, need not fear the result. But it is society at large that will derive the greatest benefit—in being provided with a well educated body of men.

The profession has, from time to time, urged the necessity of this; and even the requisitions as they now exist, have been, in a measure, forced from an unwilling community. Your committee are not prepared to digest and report a plan for extending the time and course of study for the medical student; but they look to the Regents of the University, to whom this subject is in a measure committed by law, for suitable attention to this important subject. At the present advanced period of the session, it is not probable that any legislative action can be successfully carried out; but your committee have deemed it proper to express their views on this subject thus at length.

And in conclusion, your committee would beg leave to say, that it is their unanimous opinion, that instead of levelling all distinctions between licensed and unlicensed practitioners, it is the solemn duty of the Legislature, a duty which they owe to the character of the State, the dignity of the profession, and the interest of the public at large, to rather make the distinction still broader than at present, by promoting and encouraging the still higher cultivation of the science of human health; the still farther prosecution of the study which true philanthropy must ever regard as calculated, in proportion to its perfection, to mitigate human suffering and prolong human life.

And your committee ask leave to offer for the consideration of the House, the following resolution.

Resolved, That the latter clause of section 25, chapter 15, title 7, part 1, of the Revised Statutes, regulating the practice of physic and surgery in this State, is manifestly inconsistent with the previous enactments of the same law, and ought to be repealed; yet from the advanced period of the session your committee deem it inexpedient to introduce a bill for that purpose.

